

## **REMARKS**

### **Present Application**

Claims 10, 12 - 25 and 27 - 30 are now pending in this application.

Claims 1- 9, 11 and 26 are canceled herein, without prejudice, in order to pursue other embodiments of the invention of commercial significance. Cancellation of the claims is not intended in any manner to restrict Applicant's right to pursue such claims, or the subject matter thereof, in this application or any application claiming priority from or through this application, or in any reissue, reexamination or similar application which may be filed with respect thereto. Claims 10, 12 and 13 - 25 have been amended herein. Claims 27 - 30 have been added.

### **Response to Objections**

The Examiner has objected to disclosure because of several informalities. The Examiner correctly notes that reference must be made to the sequence by use of the sequence identifier, preceded by "SEQ ID NO:" (Paragraph 2, Page 2, of the Office Action). The Examiner further correctly notes a typographical error in the abstract of the disclosure, that is, "PCR rejection" rather than "PCR reaction". Applicants extend their appreciation to the Examiner for pointing out such errors. The specification has been amended appropriately to correct such errors. Applicants, therefore, respectfully request withdrawal of the objections.

Response to Rejections

35 U.S.C. §112

The Examiner has rejected Claims 1 - 26 under 35 U.S.C. §112, second paragraph, as “being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention” (Paragraph 5, Page 2, of the Office Action). Applicants respectfully traverse such rejection on the basis that the claims in light of the specification would be clear to one of ordinary skill in the art at the time the invention was made.

The Examiner has specifically rejected Claim 1, and claims 2 - 14 that depend therefrom, on the basis that “Claim 1 is drawn to a method, but the claim lacks a step that accomplishes the goal of the method,” that is, detection of “resistant fungal cells” (Paragraph 6, Page 2, of the Office Action). Applicant respectfully asserts that cancellation of Claim 1 obviates such rejection.

Claims 15 - 22 were rejected on the basis that the phrase “from the enclosed sequence listing” was improper. Applicant asserts that as such phrase is missing from the present claims that such rejection is mooted.

Claims 24 - 26 were rejected on the basis that the phrase “as in” is indefinite. As this phrase is not found in the presently pending claims, Applicants assert that this rejection is mooted as well.

Claim 25 was rejected on the basis that it was “indefinite because it is unclear what the kit contains” (Paragraph 4, Page 3, of the Office Action). In conformance with the Examiner’s suggestion to overcome the objection, Applicants have amended the claims to use proper “Markush Group” language. Applicants, therefore, respectfully assert that the rejection of this claim is overcome.

Claim 26 was rejected “because it is missing the kit elements and/or lacks proper antecedent basis because Claim 1 does not recite components of a kit” (Paragraph 5, Page 3, of the Office Action). As Applicant’s have cancelled claim 26, without prejudice in this Response to the Office Action of October 14, 1999, Applicants assert that such rejection is obviated.

Claims 23 and 24 were rejected on the basis that the claims “are drawn to use of nucleotide sequences in a composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass” (Paragraph 6, Page 3, of the Office Action). Applicant has amended the claim to assert that the sequences are used for detecting azole derivative-resistant fungal cells. As such, Applicants respectfully assert that such rejection is obviated.

35 U.S.C. §101

The Examiner has rejected Claims 23 and 24 under 35 U.S.C. §101 “because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. §101” (Paragraph 1, Page 4, of the Office Action). Applicants respectfully disagree, but have added the limitation that the sequences are used for detecting azole derivative-resistant fungal cells. Applicants request withdrawal of such rejection based on such amendment.

35 U.S.C. §102

Claims 1, 2 and 4 stand rejected under 35 U.S.C. §102(b) as anticipated by an article by Geber *et al.* (Antimicrob. Agents Chemo. 39(12) 2708-2717 (1995)). Applicants respectfully disagree and argue that the Gerber *et al.* reference can not be said to be anticipatory as each element of the claims is not found in the reference. However, as such claims have been cancelled herein, without prejudice, Applicants respectfully assert that such rejection is obviated.

35 U.S.C. §103

The Examiner has rejected Claims 1 - 5, 11 and 26 under 35 U.S.C. §103 as being unpatentable over Gerber *et al.* (Antimicrob. Agents Chemo. 39(12) 2708-2717 (1995)) as applied to claims 1, 2 and 4, and further in view of Lai & Kirsch (Nuc. Acids

Res. 17(2) 804 (1989)) (Paragraph 4, Page 5, of the Office Action). Applicants respectfully traverse the rejection, arguing that when each claim is taken as a whole, that the subject matter thereof would not be obvious to one of ordinary skill in the art to which they apply. Further, Applicants argue that the Examiner has failed to provide adequate motivation for combining and modifying the references cited in the manner suggested. However, as Claims 3, 5, 11 and 26 have been cancelled herein, without prejudice, Applicants assert that such rejections are obviated.

#### Allowable Claims

The Examiner has asserted that "Claims 6 - 10, 12 - 15 & 25 are free of the prior art and can be placed in condition for allowance by resolution of the rejections stated above" (Paragraph 3, Page 7, of the Office Action). Applicants respectfully assert that all rejections with respect to these claims (as well as the other claims) have been resolved by the present amendments, and therefore respectfully assert that the claims are in condition for allowance.

#### CONCLUSIONS

Accordingly, it is respectfully submitted that the claims under consideration are clearly patentable over the references of record. It is submitted that the above-identified patent application is in condition for allowance. Early notification of the allowability of Claims 10, 12 - 25 and 27 - 30 is courteously solicited.